REMARKS

This responds to the Office Action dated July 2, 2010.

Claims 15, 19, 51, 55, 87, 91 and 116 are hereby amended. No claims are hereby canceled or newly added. As a result, claims 15, 19-20, 51, 55-56, 87, 91-92 and 116 remain pending in this application.

The Rejection of Claims Under § 103

Claims 15, 51, 87 and 116 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishi (U.S. Publication No. 2002/0161691) in view of Borgeson et al. (U.S. Publication No. 2003/0236739; hereinafter, "Borgeson"). For the reasons set forth below, Applicants submit that the claims – both as previously presented, and currently amended – are not obvious in view of the combination of Nishi and Borgeson.

Claim 15 states as follows:

> A network-based commerce system including:
>> a processor coupled to a memory through a bus; and
>> an auction price-setting process executed from the memory by the processor **during an auction** to cause the processor to lower a reserve price associated with a listing of an item to a seller-adjusted reserve price, and to lower a proxy bid of a buyer to a predetermined amount **below the seller-adjusted reserve price** when the proxy bid is higher than the seller-adjusted reserve price.

Applicants' claim 1 provides for lowering a reserve price of an item listing during an auction. Additionally, claim 1 involves lowering a proxy bid of a buyer to a predetermined amount below a seller-adjusted reserve price.

Neither Nishi, Borgeson, nor the combination of Nishi and Borgeson describe or suggest an auction price-setting process that executes "during an auction … to lower a reserve price associated with a listing of an item to a seller-adjusted reserve price." In the Office Action, the Examiner has suggested that Nishi describes this claim element, at least as it was previously presented. Applicants disagree.

Nishi describes an auction system that enables a seller to establish a reserve price "before [an] auction session starts"[1] and a second reserve price (i.e., a modified reserve price) during "[t]he trade judgment period P3."[2] According to Nishi, the trade judgment period is at the conclusion of an auction, or auction cycle, during which time no buyers are able to present bids. Consequently, Nishi describes a system that allows setting a reserve price prior to, and after, an auction. Nishi cannot fairly be said to describe a commerce system with an auction price-setting process that executes **during an auction** to lower a reserve price associated with a listing of an item, as is claimed.

Moreover, neither Nishi, Borgeson, nor the combination of Nishi and Borgeson describe or suggest an auction price-setting process "to lower a proxy bid of a buyer to a predetermined amount **below the seller-adjusted reserve price** when the proxy bid is higher than the seller-adjusted reserve price," as claimed by Applicants. The Examiner has suggested that Borgeson describes this claim element, at least as it was previously presented. Applicants disagree.

Borgeson describes a bid positioning system that "allows [a] bidder to place its bids in relation to a lead bid placed by another bidder in an auction based upon either a nominal or percentage distance from the lead bid."[3] Positioning a bid relative to a bid by another bidder is not the same as lowering a proxy bid to a predetermined amount below a seller-adjusted reserve price. Moreover, in direct contrast to what the Examiner has asserted, the teachings of Borgeson and the problem addressed by Borgeson are not related to, or analogous to any problem with which Applicants were concerned. Borgeson was primarily concerned with "imitating the way pricing is often determined in traditional, non-automated environments."[4] For instance, by allowing a bidder to position a bid relative to a high bid, the system of Borgeson allows a buyer to "seek preferred vendors with pricing that is near the leading market level, but not necessarily at the leading level."[5] This has absolutely nothing to do with the problems with which Applicants were primarily concerned, such as, encouraging and facilitating transactions "when a seller sets an artificially high reserve price for a product listing, which turns out to be higher than

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[1] Nishi, Paragraph [0155]
[2] Nishi, Paragraph [0155]
[3] Borgeson, Abstract
[4] Borgeson, Paragraph [0005]
[5] Borgeson, Paragraph [0005]

any bidder is willing to pay."[6] Consequently, the combination of Nishi and Borgeson is
improper.

Finally, modifying the system of Nishi with the teachings of Borgeson, as suggested by
the Examiner, makes absolutely no sense as it would defeat the very purpose of how Nishi
operates. Nishi describes a system, which, under certain circumstances, allows a seller to modify
a reserve price at the end of an auction, or auction cycle. As explained in paragraphs [0158]
through [0169] of Nishi, the system only allows a seller to modify a reserve price "when there is
a difference between the highest bidding price and the reserve price set before the auction which
is smaller than the 'maximum price gap for the reserve price modification' that the organizer can
set before the auction." Stated differently, consistent with Nishi, the seller is only allowed to
modify his initial reserve price at the end of an auction when a bidder has placed a bid that is
determined to be very close to the reserve price. As such, Nishi allows the seller to lower the
reserve price because it encourages the conclusion of a transaction when the high bid is close to
the seller's reserve price. However, modifying Nishi to have the system "lower a proxy bid of a
buyer to a predetermined amount below the seller-adjusted reserve price when the proxy bid is
higher than the seller-adjusted reserve price," as is claimed by Applicants and is alleged by the
Examiner to be described in Borgeson[7], would ensure that no transaction is completed, which is
entirely inconsistent with the motivation for allowing a seller to modify a reserve price to begin
with. Stated differently, if the system of Nishi was modified as suggested by the Examiner, such
that, after a seller lowered a reserve price for an item listing, the high bid was automatically
reduced to an amount lower than the adjusted reserve price, then no transactions would be
concluded as lowering the bid would guarantee that the reserve price was not met. This would
defeat the very reason that a seller is allowed to lower a reserve price at the end of an auction,
according to Nishi. Consequently, the Examiner's rationale for combining the references makes
absolutely no sense, cannot support, and does not support a conclusion of obviousness.

For all of the reasons stated above, Applicants submit that claims 1, 57, 81 and 116 are
not obvious in view of Nishi and Borgeson. Applicants respectfully request that the rejections be
reconsidered and the claims allowed.

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[6] Applicants' Specification, Paragraph [0006]
[7] Applicants do not agree.

Claims 19-20, 55-56 and 91-92 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishi and Borgeson in view of Herschkorn (U.S. Patent No. 6,691,094). For the same reasons set forth above with respect to claims 1, 57, 81 and 116, these dependent claims are deemed patentable.

AMENDMENT AND RESPONSE UNDER 37 C.F.R § 1.111
Serial Number:10/750,052
Filing Date: December 30, 2003
Title: METHOD AND SYSTEM TO ADJUST A SELLER FIXED PRICE OFFER

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CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 278-4051 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date October 4, 2010

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 4 day of October, 2010.

John D. Gustav-Wrathall

Name

Signature